STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 18, 2014
v	No. 313152 Wayne Circuit Court
RONALD McMULLEN, Defendant-Appellant.	LC No. 12-005497-FH

Before: SERVITTO, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to the mandatory 2-year term on the felony-firearm conviction and to 12 months' probation on the felon in possession conviction. He now appeals and we affirm.

Defendant raises two related issues on appeal: that there was insufficient evidence to support his convictions and that his convictions were against the great weight of the evidence. Specifically, defendant argues that the evidence was inadequate to establish that he possessed the shotgun at issue. We disagree.

A shotgun was found in the flat in which defendant was living. Defendant in his own testimony at trial acknowledged that he knew that the gun was there:

> Q. And you knew that shotgun was upstairs [in defendant's flat]; correct?
>
> A. Yes, ma'am.
>
> * * *
>
> Q. You told Sergeant Christensen that that shotgun was left there for your protection because items had been stolen out of that 2519 Montclair address; correct?

A. I told him – actually, I don't recall my exact words. I told him the shotgun was there because things had been coming up missing. And I told him someone left it there.

Q. And you let them leave it there; correct?

A. Yes, ma'am. I couldn't stop them, it's they [sic] house.

* * *

Q. When they left that – or this 12 gauge Mossberg up in 2519 Montclair Street, you had access to it, didn't you?

A. Obviously, it was in the house. I have access to the whole house.

Q. You have a right to control what is in that house; correct?

A. I can only control what's mine.

Q. Was anything preventing you from going to pick up that shotgun?

A. Yes, it wasn't mine.

* * *

Q. On May 11th of 2012, you knew that shotgun was upstairs; correct?

A. Yes, ma'am.

Q. And no one was upstairs when you went there preventing you from access or control of that shotgun, were they?

A. No, ma'am.

Defendant's defense was that, although he knew the gun was present and he had access to it, at no time did he in fact attempt to exercise control over the gun or actually possess it. The trial court convicted defendant, concluding that he was in constructive possession of the firearm.

Possession can be either constructive or actual. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). And "a defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant." *Id.* at 471; see also *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000).

Moreover, there is sufficient evidence to support a conviction if, when viewing the evidence in the light most favorable to the prosecution, a reasonable trier of fact could find that each element was proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). While in this case defendant presents arguments regarding the believability of the testimony of Officer Christensen regarding defendant's statement and the testimony of Starkisha West, those arguments overlook the fact that defendant's own testimony

warrants a finding that he was in constructive possession of the shotgun. Thus, conviction would be warranted even if the testimony of Chistensen and West were disregarded.[1]

As for the great weight of the evidence issue, the sole basis for defendant's argument is that there is reasonable doubt that Officer Christensen's testimony was true. This argument overlooks two important points. First, witness credibility is an issue for the trier of fact. See *People v Lemmon*, 456 Mich 625, 642, 646-647; 576 NW2d 129 (1998). Second, as discussed above, even without Officer Christensen's testimony, conviction was warranted based upon defendant's own testimony. Accordingly, this is hardly the "exceptional case" that warrants a grant of a new trial because the conviction was against the great weight of the evidence. *Id.* at 642.

Affirmed.

/s/ Deborah A. Servitto
/s/ David H. Sawyer
/s/ Mark T. Boonstra

[1] Defendant argues that Officer Christensen's testimony regarding defendant's statement to him was inadmissible hearsay. As for Ms. West, defendant argues that the trial court must have found her incredible because it acquitted defendant of felonious assault, disregarding West's testimony that defendant had pointed a shotgun at her.